RECENT CASES

ACCORD AND SATISFACTION—PAYMENT OF CLAIM IN FULL—EFFECT—CARAVIA V. LEVY, 119 N. Y. Supp. 160.—*Held,* that the cashing by a creditor of a check containing the words, "paid in full," signed by the debtor, is not an accord and satisfaction unless there is a genuine dispute between the parties as to the amount due.

In the absence of statutory provision to the contrary the payment by the debtor of part of a liquidated or certain sum of money then due and the receipt of that partial sum by the creditor with the agreement that the original debt shall be thereby extinguished does not operate as an accord and satisfaction. *Abelson v. Gordon,* 74 N. Y. Supp. 863; *McIntosh v. Johnson,* 51 Neb. 33. *Contra, Clayton v. Clark,* 74 Miss. 499. Moreover, the giving of a receipt in full does not affect the general rule. *St. Louis (Etc.) R. Co. v. Davis,* 35 Kan. 464. But Connecticut holds to the contrary. *Aborn v. Rathbone,* 54 Conn. 444. If, however, a release under seal is given in return for the payment of a lesser sum than the debt, the whole debt is discharged in those jurisdictions distinguishing between sealed and unsealed instruments. *Hosler v. Hursh,* 151 Pa. St. 415. Moreover, if the debtor gives to the creditor in addition to the partial payment some new consideration there will be a valid accord and satisfaction. *Williams v. Blumenthal, 27* Wash. 24. Such consideration may be the payment of the lesser sum in some different place, manner, or time, than that required by the original contract. *Boyd v. Moats,* 75 Iowa 151; *Jones v. Perkins,* 29 Miss. 139. And the payment of a lesser sum which is secured also constitutes a valid discharge of a larger unsecured sum. *Post v. Springfield Nat. Bank,* 138 Ill. 559. If the debt is unliquidated or in dispute payment of a lesser sum than is claimed constitutes an accord and satisfaction if that payment is accepted as payment in full. *Nassoiy v. Tomlinson,* 148 N. Y. 326.

CONSTITUTIONAL LAW—DEBT—IMPRISONMENT.—KIMBRELL V. BERRY, 67 S. E. 226 (S. C.).—*Held,* that a judgment in an action of tort is not a "debt" within the meaning of the Constitution which provides that no person shall be imprisoned for debt except in cases of fraud.

A judgment recovered on a tort is, for many purposes, such as, for instance, the interpretation of constitutional or statutory provisions exempting homesteads from liability for debt, regarded as a debt. *Delliger v. Tweed,* 66 N. C. 206; *Smith v. Omans,* 17 Wis. 395. In interpreting the common constitutional clause which provides that there shall be no imprisonment for debts, however, the overwhelming weight of authority is that a tort judgment is not a debt within the provision, and the body of him against whom the judgment stands may be taken in satisfaction. *People v. Cotton,* 14 Ill. 414; *Lower v. Wallick,* 25 Ind. 68; *In re Mowry,* 12 Wis. 52. In fact, the only state in which the contrary interpretation is given is California. *Ex parte Prader,* 6 Cal. 239. The ground most often assigned for the majority rule is, that the apparent intent of the

framers of the Constitution was simply to relieve from hardship, those innocent and honest contract debtors who, because of misfortune, were not able to pay, and it was not their purpose to aid those tort feasors who were guilty of evil doing. *Moore v. Green,* 73 N. C. 394. It has been held, however, that, where the plaintiff has waived the tort in order to sue in assumpsit, the judgment thus obtained is a debt within the constitutional provision. *Goodman v. Griffs,* 88 N. Y. 629, 639.

ELECTIONS—PRESERVATION OF BALLOTS—INSPECTION.—BRYAN v. YUNGBLUT, 125 S. W. 251 (Ky.).—*Held,* that an inspection of ballots, though demanded by the court for the use of a grand jury investigating offenses against the election laws, is impliedly forbidden by Ky. St.. Sec. 1482 (Russell's St., Sec. 4041), providing for the preservation of ballots, and prohibiting their inspection except in election contests. Carroll, J., *dissenting.*

When the statute requires election officers to seal up the ballots so that they cannot be seen or used, and prohibits the opening of them except in the case of contested elections, they cannot be opened in any other case and the courts have no power in the face of such a statute to compel their production for use as evidence. *Keenan v. People,* 58 Ill. App. 241. Hence, they cannot compel their production before a grand jury for their examination even while investigating election frauds. *Ex parte Brown,* 97 Cal. 83. The object sought by this exclusion is the preservation of the secrecy of the ballot and, although election frauds may be thus allowed to remain undetected, yet the benefits arising from the secret ballot are deemed to outweigh the mischiefs ensuing from fraudulent voting. *Ex parte Arnold,* 128 Mo. 256. It has been held, however, that such statutes are not binding upon a federal court when administering a valid criminal law relating to election frauds and that such court can compel the production of ballots before a grand jury, any law of the State to the contrary notwithstanding. *In re Massey,* 45 Fed. 629. If the officer having the custody of the ballots refuses to produce them at an election contest he may be compelled to do so. *Gibson v. Trinity Church,* 80 Cal. 359. And under some statutes ballots are not excluded as evidence in a criminal proceeding for election offenses. *Com. v. Ryan,* 157 Mass. 403.

EMINENT DOMAIN—COMPENSATION—INJURY TO PROPERTY—ELEMENTS OF DAMAGE—IMPROVEMENT OF STREET—REMOVAL OF SHADE TREES.—MCEACHIN v. MAYOR OF CITY OF TUSCALOOSA, 51 So. 153 (ALA.).—*Held,* a constitutional requirement that a municipality taking property for public use make just compensation for property so taken or injured, gave one whose property is so injured, a right of action for resulting damages, irrespective of whether the fee of the property is in the plaintiff or the taker, so that if the removal of shade trees in the improvement of the street affects the value or enjoyment of abutting property, the owner of such property would have a right of action against the city for damages, though he was not the owner of the trees. Dowdell, C. J., and Sayre, J., *dissenting.*